

and if issue shall be joined on such proceedings, the same shall stand for trial on the second day of the next succeeding term of such Court, (in case such issue shall be joined in the recess of such court) and if such issues shall be joined during the session of such Court, then the same shall stand for trial during such term, unless sufficient cause shall be shewn to the Court by the party or parties defendant, for the continuance thereof, in which case such issues shall be heard on the second day of the next succeeding term of such Court, unless the parties shall agree upon an earlier day, and such issues shall be tried by jury if either party desire it, as other issues of fact are triable, but they may be heard or determined by such Court if both parties agree, and in case a verdict shall be found for such petitioner, or judgment given for him upon demurrer or for want of a plea, such petitioner shall thereupon recover his damages and costs, as he might have done in such action on the case aforesaid, to be levied by execution on attachment, and a peremptory writ of Mandamus shall be granted thereupon without delay against such defendant or defendants, and in case such judgment shall be given for the defendant or defendants, he, she or they shall receive his, her or their costs of suit, to be levied in manner aforesaid.

In case of neglect to file answer.

SEC. 5. *And be it further enacted*, That in case such defendant or defendants shall neglect to file his, her or their answer to such petition by the day named in the order of the judge, after being served with notice thereof, the said judge shall thereupon proceed to hear the said motion ex parte within five days thereafter, and if he shall be of the opinion that the facts and law of the case authorise the granting of a Mandamus as prayed, he shall thereupon without delay order a peremptory Mandamus to issue, and shall also adjudge to the petitioner his costs of suit, and if he shall be of opinion that the facts and law of the case do not authorise the granting of a Mandamus, he shall dismiss such petition with costs against the defaulting defendant or defendants.

Not lawful for Judge to issue.

SEC. 6. *And be it further enacted*, That from and after the passage of this act, it shall not be

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